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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2013-982**

12 **MALINDA LEIGH PRESTON**
13 **aka MALINDA LEIGH HERRON**
14 **aka MALINDA HERRIN PRESTON**
13954 Windrose Avenue
Corona, CA 92880

A C C U S A T I O N

15 **Registered Nurse License No. 754420**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about July 13, 2009, the Board of Registered Nursing issued Registered Nurse
25 License Number 754420 to Malinda Leigh Preston, aka Malinda Leigh Herron, aka Malinda
26 Herrin Preston (Respondent). The Registered Nurse License was in full force and effect at all
27 times relevant to the charges brought herein and expired on February 28, 2013.

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4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

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The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

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REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

8. California Code of Regulations, title 16, section 1445(b), states:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Disciplinary Action by the Louisiana Board of Nursing)

3 10. Respondent is subject to disciplinary action under Code section 2761, subdivision
4 (a)(4) on the grounds of unprofessional conduct in that Respondent was disciplined by the
5 Louisiana Board of Nursing for violation of Louisiana Revised Statute 37:921(3) (unfit or
6 incompetent by reason of negligence, habit, or other causes). The circumstances are as follows:

7 11. On or about November 22, 2011, while employed at Willis-Knighton Medical Center
8 in Shreveport, Louisiana, Respondent demonstrated narcotic discrepancies, failed to administer
9 controlled medication removed by Respondent, failed to account for said medication and refused
10 an employer requested for-cause test pursuant to the narcotic discrepancies.

11 12. On or about June 1, 2012, Respondent and the Louisiana Board of Nursing entered
12 into a Consent Order whereby Respondent's Louisiana Registered Nurse License No. 134311 was
13 placed on probation for two years with terms and conditions.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number 754420, issued to
18 Malinda Leigh Preston, aka Malinda Leigh Herron, aka Malinda Herrin Preston;

19 2. Ordering Malinda Leigh Preston, aka Malinda Leigh Herron, aka Malinda Herrin
20 Preston, to pay the Board of Registered Nursing the reasonable costs of the investigation and
21 enforcement of this case, pursuant to Business and Professions Code section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: April 29, 2013

24 Louise R. Bailey
25 LOUISE R. BAILEY, M.Ed., RN
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
State of California
Complainant

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